UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 25
SUBREGION 33

SPRINGFIELD URBAN LEAGUE, INC.

RESPONDENT,

and

AMERICAN FEDERATION OF STATE, COUNTY AND MUNICIPAL EMPLOYEES (AFSCME), COUNCIL 31, AFL-CIO,

CHARGING PARTY.

Cases 25-CA-248142
25-CA-248144
25-CA-258335

CHARGING PARTY'S RESPONSE IN OPPOSITION TO MOTION FOR PARTIAL DISMISSAL OF THE COMPLAINT

Charging Party American Federation of State, County and Municipal Employees (AFSCME), Council 31, AFL-CIO, by its attorney, responds in opposition to the Motion for Partial Dismissal of the Complaint[1] in this case as follows:

Introduction

1. Respondent Springfield Urban League, Inc., has moved to dismiss certain allegations of the Complaint based on Respondent's assertion that such allegations are based on untimely filed charges and therefore barred by Section 10(b) of the Act.

2. For, the following reasons, Respondent has not established that the General Counsel cannot prove any set of facts in support of the Complaint allegations at issue that would entitle him to relief, and the Motion should therefore be denied.

[1] On January 15, 2021, subsequent to the filing of Respondent's Motion, the Regional Director issued an Order Consolidating Cases, Consolidated Complaint and Notice of Hearing adding allegations based on a third charge. The Complaint allegations that are the subject of the Motion remain unchanged.

Statement of Facts

3. On September 12, 2019, Charging Party filed the Charge in Case 25-CA-248142, alleging violations of Section 8(a)(1) and (4) of the Act. Such charge alleges in part that: "The employer unilaterally imposed a series of major changes, impacting hours, wages, and conditions of employment, on bargaining unit employees."

4. The Charge in Case 25-CA–248142 was filed, in part, based on Charging Party's becoming aware on about July 27, 2019 that Respondent was closing one of the its Head Start sites, located in Jacksonville, Illinois, and subcontracting the work performed by Charging Party's bargaining unit members at such site.

5. The site closure and concomitant subcontracting at issue in Case 25-CA-248142 occurred in about July 2019 and involved a new action of subcontracting.

6. On September 12, 2019, Charging Party filed the Charge in Case 25-CA-248144, alleging violations of Section 8(a)(1) and (4) of the Act. Such charge alleged that: "Since negotiations begin [sic] for a successor agreement, the employer demonstrated through the totality of its actions a failure to bargain in good faith and to go through the motions of bargaining without the intent to reach a settlement. On a frequent and consistent basis: the employer arrives unprepared to bargain; decision makers are not present at the bargaining table; the employer refuses to TA proposals when agreed to; cancels previously agreed to bargaining dates; and refuses to provide requested information."

7. On September 10, 2020, Charging Party filed an Amended Charge in Case 25-CA-248144, alleging a violation of Section 14(a)(1) of the Act. The amended charge alleges that: "On or about August 21, 2019, the Employer, via Director of Finance & Human Resources Cassondra Bacon, violated Section 8(a)(1) of the Act, by stating that the Employer was going to modify its

proposal regarding arbitrations because employees were exercising their right to utilize the grievance and arbitration mechanism."

8. Charging Party and Respondent began bargaining toward a successor collective bargaining agreement on April 1, 2019.

9. On August 6, 2019, Respondent's Director of Finance & Human Resources Cassondra Bacon informed Charging Party that Respondent agreed to withdraw its bargaining proposal that Charging Party would pay the entire cost of arbitration and to agree to prior contract language providing that Charging Party and Respondent would share the costs of arbitration and that she was willing to "TA" the arbitration provision of the successor contract.

10. On August 21, 2019, Charging Party and Respondent met for a bargaining session at Charging Party's offices. Charging Party asked Respondent to "TA" the arbitration provision of the successor contract, including the provision that Charging Party and Respondent would share the costs of arbitration. Cassondra Bacon stated that Respondent had received notices about scheduling upcoming arbitrations and so was refusing to "TA" the language that provided that Charging Party and Respondent would share the costs of arbitration.

Argument

11. In ruling on a motion to dismiss under Sec. 102.24 of the Board's Rules, "the Board construes the complaint in the light most favorable to the General Counsel, accepts all factual allegations as true, and determines whether the General Counsel can prove any set of facts in support of his claims that would entitle him to relief." *Detroit Newspapers Agency*, 330 NLRB 524, 525 fn.7 (2000).

12. Respondent has moved to dismiss certain allegations of the Complaint on the basis that

they are based on charges untimely filed under Section 10(b) of the Act. Section 10(b) provides that "no complaint shall issue based on any unfair labor practice occurring more than six months prior to the filing of the charge with the Board."

13. Respondent asserts that Paragraphs 7(a) through 7(c) of the Complaint allege a failure to bargain over subcontracting that occurred in 2015, more than six months prior to the filing of the Charge in Case 25-CA-248142.

14. Section 7(a) of the Complaint alleges that: "About July 31, 2019, Respondent subcontracted work previously performed by Unit employees at Respondent's Jacksonville, Illinois site to a subcontractor." Section 7(b) and (c) of the complaint allege that the subcontracting relates to the wages, hours, and other conditions of employment of the bargaining unit and is a mandatory subject of bargaining, and that Respondent engaged in the subcontracting at issue without affording Charging Party notice and an opportunity to bargain over such conduct and the effects of the conduct.

15. The Charge in Case 25-CA-248142 was filed, in part, based on Charging Party's becoming aware on about July 27, 2019 that the Respondent was closing one of its Head Start sites, located in Jacksonville, Illinois, and subcontracting the work performed by Charging Party's bargaining unit members at such site. The site closure and concomitant subcontracting at issue in Case 25-CA-248142 occurred in about July 2019 and involved a new action of subcontracting.

16. The Charge in Case 25-CA-248142 was filed on September 12, 2019, less than two months after Charging Party became aware of the subcontracting at issue in the charge.

17. Accordingly, Respondent's motion to dismiss Paragraphs 7(a) through 7(c) of the Complaint are without merit and should be denied.

18. Respondent has asked that Paragraph 10 of the Complaint be dismissed. Paragraph 10 alleges that Respondent by its conduct in Paragraphs 7(a), 7(c), 8(f) and 8(g) of the Complaint, refused to bargain in good faith with Charging Party. Presumably, Respondent intended only to seek the dismissal of the portion of Paragraph 10 that relates to Paragraphs 7(a) and 7(c), since Respondent has not moved to dismiss Paragraphs 8(f) and 8(g) of the Complaint. In any case, since the Charge in Case 25-CA-248142 was timely filed, the motion to dismiss as to any portion of Paragraph 10 of the Complaint is without merit and should be denied.

19. Respondent asserts that Paragraph 5 of the Complaint alleges that an action occurred on August 21, 2019, and that the Amended Charge in Case 25-CA-248144 alleging such action was not filed until September 10, 2020, more than six months after Charging Party was aware of such action. Respondent asserts that the allegations with respect to the August 21, 2019 events are not closely related to the allegations of the original Charge in Case 25-CA-248144 and that the allegations in Paragraph 5 of the Complaint are thus time-barred.

20. Paragraph 5 of the Complaint alleges that: "About August 21, 2019, Respondent, by Cassondra Bacon at the Union office, told employees that Respondent was modifying its proposal regarding the payment of arbitration expenses because of the employees' Union activities."

21. Respondent has also moved to dismiss Paragraph 9 of the Complaint. Paragraph 9 of the Complaint alleges that by its conduct alleged in Paragraph 5, Respondent violated Section 8(a)(1) of the Act.

22. A Complaint based on allegations in an amended charge filed more than six months after the events at issue in the amended charge is timely where the events at issue in the amended charge are "closely related" to the allegations of the original timely-filed charge. In evaluating whether

timely and alleged untimely allegations are closely related, the Board (1) considers whether the allegations involve the same legal theory; (2) considers whether the allegations arise from the same factual circumstances or sequence of events; and (3) may look at whether the Respondent would raise the same or similar defenses to both allegations. *Redd-i, Inc*., 290 NLRB 1115, 1116 (1988); *Earthgrains Co.*, 351 NLRB 733, 734 (2007) (citing *The Carney Hospital*, 350 NLRB 627 fn. 8 (2007) (the third prong of the *Redd-i* test is not mandatory)).

23. Respondent asserts that the Amended Charge in Case 25-CA-248144 and Paragraph 5 of the Complaint are based on a legal theory distinct from that of the original Charge; that the allegations of the original charge and the Amended Charge are not causally or factually related; and that the allegations in the Amended Charge are not related to any pending charge.

24. However, the allegations of the initial Charge in Case 25-CA-248144 allege violations of Section 14(a)(1) and (4) in connection with Respondent's actions at the bargaining table during bargaining toward a successor contract. The initial charge alleged, in part, that " the employer refuses to TA proposals when agreed to." The allegations of the Amended Charge are also based on actions that occurred at the bargaining table during bargaining toward a successor contract, and involve Respondent's action in refusing to "TA" an agreed upon proposal. On August 6, 2019, Respondent's Director of Finance & Human Resources Cassondra Bacon informed Charging Party that Respondent agreed to withdraw its bargaining proposal that Charging Party would pay the entire cost of arbitration and to agree to prior contract language providing that Charging Party and Respondent would share the costs of arbitration and that she was willing to "TA" the arbitration provision of the successor contract. Then, on August 21, 2019, at a contract bargaining session at Charging Party's offices, Charging Party asked Respondent to "TA" the arbitration provision of the successor contract,

including the provision that Charging Party and Respondent would share the costs of arbitration. Cassondra Bacon responded by stating that Respondent had received notices about scheduling upcoming arbitrations and so was refusing to "TA" the language that provided that Charging Party and Respondent would share the costs of arbitration.

25. The Amended Charge in Case 25-CA-248144 amended a pending timely-filed charge.

26. The allegations of the Amended Charge in Case 25-CA-248144, which alleges a violation of Section 8(a)(1) of the Act, involve the same legal theory as one of the legal theories in the initial Charge, which alleged violations of both Section 8(a)(1) and 8(a)(4) of the Act.

27. The allegations of the Amended Charge arise from the same factual circumstances or events as those which formed the basis for the initial Charge. The original charge involved Respondent's actions in contract bargaining, including the refusal to "TA" agreed upon proposals, and the Amended Charge involves a refusal to "TA" an agreed upon proposal.

28. The allegations of the Amended Charge are thus closely related to the allegations of the initial Charge.

29. Thus, the allegations of Paragraph 5 of the Complaint are based on a timely-filed charge, and the motion to dismiss Paragraphs 5 and 9 of the Complaint is without merit and should be denied.

30. For the foregoing reasons, the Motion for Partial Dismissal of the Complaint should be denied in its entirety.

WHEREFORE, Charging Party requests that Respondent's Motion for Partial Dismissal of the Complaint be denied in its entirety.

Respectfully submitted,

/s/Melissa J. Auerbach

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CERTIFICATE OF SERVICE

Melissa J. Auerbach, an attorney, hereby certifies that on January 19, 2021, she caused a copy of the foregoing **Charging Party's Response in Opposition to Motion for Partial Dismissal of the Complaint** to be served by email on the following:

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